IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 276 OF 2003

Hari Ganpat More ... Appellant

V/s

The State of Maharashtra
through Nandgaon Police Station. ... Respondent

Mr. N.R. Bubna for the appellant.

Mrs. S.D. Shinde, A.P.P. for the respondent.

CORAM: V.G. PALSHIKAR &
SMT. NISHITA MHATRE, JJ.

DATED: 10TH NOVEMBER, 2006.

ORAL JUDGMENT (PER SMT. NISHITA MHATRE, J.):

1. The accused has been convicted and sentenced under Sec. 302 of the Indian Penal Code by the III Additional Sessions Judge, Malegaon. Being aggrieved by this decision, the accused has preferred the present appeal.

2. The accused Hari and his wife Jayawantabai were agricultural labourers. They work on the land of one Anjanabai More. On 26.6.1999 many persons from the village were attending a funeral. Anjanabai's grandson,

Nitin alias Aba rushed there to tell her that he had heard some woman cry out in her land. Anjanabai requested the complainant, Dagu to find out what the problem was in her farm. Aba had also informed Anjanabai that it was the accused and the deceased who were working on her farm at that point of time. Anjanabai therefore requested the complainant to pacify the accused since the accused would often quarrel with his wife, the deceased. He had been warned by the people of the village not to indulge in these quarrels. They had allayed his misgivings about his wife's fidelity. Since the complainant knew of the past history of the quarrels between the accused and his wife, he asked the police patil to accompany him to Anjanabai's land. When they reached the spot, they found that Jayawantabai was lying dead in the farm. She had injuries on her neck and a blood stained axe was lying near the corpse. The complainant also saw a cap which he identified to be that of the accused. Since the complainant suspected that the accused was responsible for Jayawantabai's death, he lodged a complaint with the police. After the spot panchnama and inquest panchnama were prepared, the articles found on the spot were seized. The police searched for the accused, however, they were able to apprehend him two days after the incident and the arrest panchnama was

drawn and the blood stained clothes of the accused were seized. All the blood stained articles including clothes of the accused were sent to the chemical analyzer. The post-mortem examination was conducted on the corpse and the medical officer found that the death occurred due to the injuries sustained by the victim.

3. The complainant has been examined as PW-1 by the prosecution. He has spoken about the earlier quarrels between the accused and the deceased. He has stated that he was aware that the accused and the deceased were working on Anjanabai’s land for atleast 4-5 days before the incident. He has then stated that, while he was attending the funeral, Aba Pundlik - the grandson of Anjanabai informed her that the accused was quarrelling with his wife. Anjanabai deputed the complainant who is her nephew to find out what had happened in her farm. The witness has stated that when he reached the farm with the police patil, he found Jayawantabai lying dead. A cap, an axe and a spade were lying near the body. The cross-examination which has been conducted is not very significant and does not elicit any admission or contradiction from this witness. However, a perusal of the complaint filed by him indicates that he had identified a cap which was lying at the spot of the incident as belonging to his brother-in-law Hari, who is

the accused in this case.

4. The second witness examined by the prosecution is a 15 year old boy Nitin alias Aba Pundlik Borse. This witness has seen the accused and the deceased together, last. They were digging the land of Anjanabai. He resided in a hut which was at a short distance from Anjanabai's land. He heard the victim crying out for help. He then rushed to his grandmother Anjanabai and informed her about the cry that he heard from her land. This witness has corroborated the evidence of PW-1 and he states that PW-1 was deputed by Anjanabai to check out the commotion in her land. The cross-examination of this witness does not in any manner deflect the credibility of this witness.

5. Anjanabai has been examined as PW-3. She has stated that the accused and his wife was working on her land. She has corroborated the evidence of PW-1 and PW-2 when she stated that Aba Pundlik had informed her that he had heard cry of the victim while she was working on her land. She has also stated that she had requested her nephew PW-1 to mediate the quarrel between the accused and the victim. This witness then stated that she went to attend the funeral and she found the dead body of the victim with injuries on the neck. However, this witness

does not speak about any other articles being found near the dead body.

6. PW-4 is the panch witness to the seizure of the clothes of the accused.

7. PW-5 is a neighbour of the accused. She has spoken about the frequent quarrels that occurred between the accused and his wife. She has stated that the reason for the frequent quarrels was that the accused suspected his wife's character. Regarding the incident of 26.6.1999 she has stated that she learnt about Jayawantabai's death at about 12.30 p.m. when she went to Anjanabai's land. She saw injuries on the neck of the victim. According to this witness, the injuries were bleeding and an axe with blood stains and a cap was lying near the body.

8. PW-6 is another neighbour of the accused. He has also corroborated the statement made by the other witnesses that there were frequent quarrels between the accused and his wife. He has spoken about the villagers trying to persuade the accused not to quarrel with his wife whom the accused suspect. Inspite of the villagers persuasion, it appears that there was no change in the behaviour of the accused. This witness has also seen

the corpse and has stated that there were injuries on the face and neck of the victim. He has seen a cap and an axe lying near the corpse.

9. PW-7 is the police patil who accompanied the complainant to the spot of the incident. He has corroborated the testimony of PW-1 regarding the body being found in Anjanabai’s farm and the presence of an axe and a cap near the body. This witness has also spoken about the quarrels between the accused and his wife.

10. The investigating officer has been examined as PW-8. He has proved the spot panchnama and the seizure of the articles from the scene of offence. This witness has obtained the report from the chemical analyzer after sending the blood stained articles for analysis.

11. The last witness examined by the prosecution is the doctor who conducted the post-mortem examination. The injuries have been described by this witness and he has opined that the injuries sustained by the victim were possible with a sickle or an axe which was seized.

12. The learned advocate for the accused has submitted that the theory of the prosecution that the accused was

last seen together with his wife has not been proved. He further submits that none of the witnesses had seen them together on the fateful day. He submits that although there were frequent quarrels between the accused and his wife, it would be necessary to establish that the accused had a motive to kill his wife. The learned advocate then states that the conduct of PW-1 is not a natural as instead of going directly to the farm when requested to do so by Anjanabai, he went to the police patil and asked him to accompany him. The learned advocate then submits that the chain of circumstances relied on by the prosecution is not complete and, therefore, the accused cannot be convicted on a mere hypothesis.

13. We have perused the evidence on record and find that we are unable to agree with the submissions of the learned advocate for the accused. PW-2 has categorically stated in his evidence that he had seen the accused and the victim quarrelling on Anjanabai’s land and that he had heard the victim’s cry for help. Therefore, the prosecution has been able to establish through this witness that the accused was last seen together with the victim. In fact, immediately after he heard the victim crying for help, PW-2 ran to his grandmother and PW-1 went to Anjanabai’s farm alongwith

police patil, by which time the victim was already dead. Therefore, this submission of the learned advocate is without merit. Almost every witness examined by the prosecution has spoken about the fact that the accused suspected his wife's character. They have all stated that the villagers had tried to persuade the accused to settle his grievances with his wife and had assured him that his wife was not unfaithful to him. The accused, however, refused to accept the advice of the other villagers when they met about six months prior to the incident. He continued with his overbearing attitude towards his wife. Thus the fact that the accused frequently quarrelled with his wife has been established by the prosecution. The prosecution has also established that the motive for killing the victim was that the accused suspected her fidelity. Therefore, the submission of the learned advocate that there was no motive for the accused to kill his wife cannot be accepted. In fact, the learned advocate had stated that the motive is not relevant at all. This submission, is stated, only to be rejected because when the Court considers whether a conviction under Section 302 of the Indian Penal Code is maintainable, motive would be a relevant factor.

14. As regards the conduct of PW-1, we do not agree

with the learned advocate for the accused that it was unnatural for PW-1 to have gone to the police patil to request him to accompany him to the Anjanabai's farm. In view of the history of the quarrelsome nature of the accused and the fact that he did not heed the advice of the villagers to stop quarrelling with his wife, it was but natural for PW-1 to request the police patil to accompany him to Anjanabai's farm. PW-1 being the brother-in-law of the accused, would probably not have been as effective in stopping the bad behaviour on the part of the accused as the police patil. In such circumstances, we do not find the conduct of the PW-1 unnatural.

15. Admittedly, the case of the prosecution is based on circumstantial evidence. The circumstances which the prosecution relied on are - (i) That the accused often quarrelled with his wife; (ii) That the accused had a motive to kill his wife since he suspected her character; (iii) That the accused was last seen together with the victim by PW-2; (iv) That the blood stained axe was found near the dead body of the victim; (v) That the cap belonging to the accused was also found near the dead body of the victim; (vi) That when the accused was arrested two days after the incident, his clothes were blood stained; (vii) That the blood stains

on the clothes of the accused belonged to the same group as the blood group of the victim. In our opinion, therefore, the prosecution has established a chain of circumstantial evidence which is complete. The only hypothesis which is possible is that the accused is responsible for the homicidal death of Jayawantabai. The evidence on record admits no other possibility or probability.

16. We have considered the evidence on record and reappreciated the same and have reached the aforesaid conclusion. We find no error in the findings arrived at by the trial Judge and confirm the same.

17. Appeal dismissed.

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